Responses from Robert Lipscomb and Charles Carpenter
to questions from Commissioner Steve Mulroy

Questions Regarding Bass Pro Shops at The Pyramid
November 12, 2008

- **What is the scope of the project?**

  The Jan. 28, 2008 RKG "Revised Fiscal Analysis" projections are:
  (a) "Anchor Retail" of 150,000 square feet;
  (b) "Aviary and museum" of 180,000 square feet;
  (c) "Dining and drinking" of 42,000 square feet; and
  (d) "Hotel complex" of 287,000 square feet.

- **Does Bass Pro intend to develop each of these features, of at least each respective size? If so, can that be specified in the Development Agreement?**

  Bass Pro's initial feasibility studies reflected these components. The purpose of the Development Period is to provide the necessary time for development of the project plans. The specifics on each component will be determined during the Development Period and will be addressed specifically in the Improvement Agreement, not the Development Agreement.

- **Why will the aviary and museum be "wholly exempt" from personalty tax taxation? (1/28/08 RKG Report, and 8 n.2).**

  The aviary and museum will be a 501 (c) 3 nonprofit entities (and developed and operated in conjunction with several well-known local nonprofit conservation organizations).

- **Will Bass Pro itself develop all the above-described features, except for the hotel?**

  Section 3.1 clearly states:
  3.1. Project Description. Generally, the project under consideration involves Bass Pro leasing the Memphis Pyramid and making extensive improvements to the Facility, including retrofitting the existing facility and new construction (the "Improvements"). It is also contemplated that the project would include certain partner developments (the "Partner Developments"), which could include, but are not limited to, in addition to retail, one or more of the following components: a hotel, aquarium, restaurants, traveling exhibits, conference space, additional retail, museum and boat showroom. The "Project Costs" shall include all hard and soft costs associated with the development of the Leased Premises, including, without limitation, the improvements, all development by Bass Pro, the Partner Developments (whether developed directly by Bass Pro or by one or more third parties), and all common and supporting areas and amenities.

- **RKG estimates (1/28/08 Report, at 3) that the hotel will have approximately 335 rooms. Is there a minimum number of rooms involved in the project? If so, can that be specified in the Development Agreement?**

  No. The final description of each component will be determined during the Development Period and specified in the Improvement Agreement.

- **In the timeline at the beginning of the Aug. 25, 2008 document entitled "Fulfilling the Promise of the Pyramid" (Tab 1, p.8), it states that "consultants...recommended a "tourism/retail destination use --- Bass Pro Shops, Cabela's, L.L. Bean, or Orvis..." However, the 2005 RKG Report never mentions Bass Pro or any of these other stores. It recommends "some form of tourism related activity, coupled with specialty retail/restaurants" (p.5), which could include many different types of uses. [See also p. 4 ("tourist oriented/retail/restaurant types of uses"; p. 20 ("particularly with respect to retail, arts and entertainment and food related services"). Indeed, the Report cites as an example (p.25) Faneuil Hall in Boston, which is a large aggregation of over 100 different stores. How did the concept evolve from that more open-ended approach to settling on Bass Pro exclusively? Did that come from RKG, or elsewhere?**

  "Fulfilling the Promise of the Pyramid," 08/25/08, Page 18, 1st Paragraph:
  "More to the point, it was The Pyramid Committee that approached Bass Pro Shops following the endorsement by the committee consultant of destination retail as the best use of the former arena, so time has been spent establishing the business and personal relationships that are central to success in a project of this kind."

- **Has the City already committed to Bass Pro that Bass Pro can have a large fish displayed on each face of the Pyramid, as indicated in the rendering? (Tab 7 0f 8/25/08 "Fulfilling the Promise" document)? If not, who will decide whether that is an approved feature of the newly remodeled facility?**

  Development Agreement, Page 10, Section 3.2.5, h):
  h) Work with Bass Pro to obtain the rights for all signage and permitting required such that Bass Pro, in its judgment, has adequate signage (including without limitation highway and road signage) for the promotion of its operations so as to enhance its marketing potential in the Mid-South region as authorized by established signage regulations. The parties, additionally, shall work together to promote the City through including the name "Memphis" on certain agreed Pyramid skin/facade signage. The City and County, shall work with Bass Pro to obtain all necessary approvals, waivers, or other entitlements to enable Bass Pro to be entitled to 50-60 foot signage on all sides of the Facility to the extent permitted by law, and the City and County shall use their best efforts to accommodate the needs of the Bass Pro in road signage and way finding signage, however, no signage will be erected until the execution of a definitive lease agreement by the parties.

- **RKG estimates (1/28/08 Report at 3) an "ongoing and direct" employment of 566 jobs. How many employees will the Bass Pro store actually have? How many employees would the hotel have?**

  The retail store itself should average about 300-325. All other employment estimates will be refined during the Development Period and outlined in the Lease and Improvement Agreements.

- **RKG estimates (1/28/08 Report at 4) that the "direct and ongoing" annual wages yields $12 million plus $2.8 million in "indirect" wages. What will be the median wage of the employees at Bass Pro? At the hotel?**

  Will be determined during the Development period, but must comply, at a minimum, with the City of Memphis' Living Wage Ordinance.

- **Sales are down in Gander Mountain and Cabela's, which are publicly traded (1/28/08 RKG Report at 8). How has sales volume been trending in Bass Pro stores over the last 3 years?**

  Bass Pro is a privately held company, and therefore, sales numbers are confidential. The financial strength of the company has allowed Bass Pro to continue its pursuit of this project.

- **What is the average annual sales volume for a Bass Pro store? [Note: At the Aug. 25, 20008 presentation, Bass Pro representative Jim Hagale indicated such figures would be forthcoming in response to a County Commissioner request. To date, they have not been provided.]**

  Bass Pro is a privately held company. $50 million in annual sales to meet the $1,000,000 minimum annual rent. Most recent openings have experienced $65-$80 million in annual sales.

- **The Development Agreement (Sections 4.2.2, also 4.2.9) provides that Bass Pro's annual rental payment of at least $1 million is subject to a tax offset. How exactly does this work? What taxes can be used to offset Bass Pro's payment, and how are they calculated? What are the "real estate taxes" referred to in Sec. 2.9?**

  The tax offset is further described in 4.2.9. Real Estate Taxes or payments in lieu refer to property taxes only. Since the Property is publicly owned, it is exempt from Real Estate taxes. There is no offset for the payment of Personalty Taxes.

  4.2.9 Taxes. Bass Pro will be responsible for paying real estate taxes or payments in lieu thereof, however Bass Pro will receive a credit on a dollar-for-dollar basis toward Rent payable by Bass Pro (including minimum rent) equal to all payments made by Bass Pro in this regard.

- **Since Bass Pro does not have concerns about the structure of the Pyramid (Jim Hagale Testimony, Aug. 25, 2008), and since the year study period provided for in the Development Agreement is primarily about permitting (id.), can Bass Pro simply commit to do the project assuming proper permitting?**

  No. In order to utilize federal funds, there are follow-up studies that will be performed during the Development Period. The results of these studies may impact the final plan.

- **The Agreement (p.7, Sec 3.2.2) states that Bass Pro will decide if the Project is "feasible and economically viable." Bass Pro has had over three years to determine the project's feasibility and economic viability. What new information will the Planning Phase provide that has not already been available over the last 3 years?**

  The results of the follow-up studies performed during the Development Period as well as further analysis of the current economic market have not been available over the last 3 years and must be considered when finalizing the scope of the project.

- **Exactly what are the "corporate and other approvals" identified as "necessary prerequisites to any definitive agreement" (Development Agreement, at 4, Sec. 1.3)? Since they are made at the "sole discretion of Bass Pro," does this mean that Bass Pro's obligation to pay $35,000 per month is contingent on these "prerequisites"? Ditto Bass Pro's obligation to pay $500,000 as "walk-away money."**

  This section references the definitive agreements (the Lease and the Improvement Agreement) not the obligation of Bass Pro to perform under the Development Agreement. Bass Pro has already executed the Development Agreement and paid its first monthly fee.

- **Read Sec 1.3 (see Question immediately above) in pari material with Section 3.2.4 (p.9), which says that "Bass Pro's obligations pursuant to this Agreement are expressly contingent upon..." Bass Pro's ability to obtain suitable funding and an "acceptable Development Partner." Do not these two provisions, taken together, relieve Bass Pro of any obligation to pay $500,000 in "walk-away money"?**

  No. Actually, the opposite is true. The matters referenced in Section 3.2.4 are actually reasons for Bass Pro to either terminate the Agreement or not to proceed with the definitive documents. In the event of termination, Section 5.4 will govern whether Bass Pro must pay $500,000 in "walk-away money."

  5.4 Termination. Unless amended or otherwise modified, this Agreement shall automatically terminate upon the expiration of the Development Period. Upon such termination, there shall be no further obligation or liability pursuant to this Agreement on the part of any Party for the Project or otherwise, provided that the parties have either completed, or substantially completed the components set forth in Article III of this Agreement, which comprise the activities of the Development Period. If, however, during the Development Period, it should appear to the parties that either (a) the development as

planned and approved is financially infeasible (b) it is determined after careful review that the Pyramid structure is unable to be redeveloped in the manner created by Bass Pro and contemplated by the parties, and the City and County fail to correct the deficiencies in the Pyramid Structure required for Bass Pro's redevelopment, or the City and County fail to deliver the premises to Bass Pro in a manner that will allow Bass Pro to carry out its pre-approved development plans, (c) Bass Pro does not secure Development Partners satisfactory to it by acceptable dates, or (d) the City or County fail to satisfy those necessary obligations as set forth in this Agreement, Bass Pro may terminate this Development Agreement by providing at least thirty (30) days prior written notice to the City and County, or (e) Bass Pro defaults on the payment of the Monthly Fee as set forth in Section 3.3 of this Agreement.

In the event of termination of this Development Agreement pursuant to subsections (a), (c) or (e) above, it would be difficult or impossible to determine the amount of loss that might be suffered by the City and County. Therefore, following any such termination by Bass Pro pursuant to subsections (a), (c) or (e), above, and within ten (10) days thereafter, Bass Pro shall pay to the City and County in place of actual damages as fixed, agreed and liquidated damages the total sum of five hundred thousand ($500,000.00) dollars. Following such payment of liquidated damages, Bass Pro shall have no further obligation or liability pursuant to this Agreement or otherwise, and all obligations and liabilities of Bass Pro shall end.

In the event Bass Pro terminates this Development Agreement pursuant to subsections (b) or (d), above, neither party shall have any obligation or liability to the other pursuant to this Development Agreement or otherwise, and all obligations and liabilities of the parties shall end.

Notwithstanding the provisions of this Section, termination of this Agreement as set forth herein is subject to the provisions in 3.2.8(ii), 3.2.9 and 3.2.10 which survive termination.

Absent the foregoing circumstances, it is anticipated that each Party will exercise commercially reasonable efforts to complete the conditions and due diligence milestones as set forth herein.

- **Why is Bass Pro unwilling to buy the Pyramid building and pay property taxes on it?**

The City is not interested in selling the Pyramid, because of the building's iconic value. Also, because of the importance of controlling the riverfront and maintaining control of this public asset, it is more in the interest of the City to retain ownership of the Pyramid.

Annual rent of $1.8 million for 55 years = $99 million. Present Value at 7.5% equals ~~$23,550,483.43~~ $23.6 million. Total PILOT fee of ~~$4.8~~ $3.6 million for 15 years plus total City & County Taxes of ~~$93~~ $69 million for 40 years equals ~~$97.8~~ $73 million. Present Value at 7.5% equals ~~$12,749,246.12~~$9.6 million.

- **Doesn't the "Total Project Cost" identified as $75 million (Development Agreement, at 6, Sec 3.1) includes the $30 million contribution from City and County, referred to two sentences later (id.)?**

  Yes. The paragraph continues to state the initial estimated costs have come in much higher than $75 million.

  "The total Project Cost was anticipated to be approximately Seventy Five Million Dollars ($75,000,000). The anticipated costs, however, as revealed by the due diligence investigation and the consultants hired by Bass Pro would be significantly higher. One of the purposes of the Development Period is for Bass Pro to have the opportunity to endeavor to revise the project in a manner that is economically viable. The actual Project Costs shall be funded, in part, by a Landlord Contribution from the City and County of Thirty Million Dollars ($30,000,000). With the increased cost of the project, the City's and County's financial involvement will be more highly leveraged than originally anticipated."

- **We have been told (Aug. 25, 2008 Presentation) that the project will involve no new Tourism Development Zones, only the existing one in that area. If that is true, why does the Agreement (p. 11, Sec 3.2.6) require the City and County to "Seek State legislative approval for Tourism Development Zone"?**

  This will be changed to read "administrative approval". It was initially contemplated that a new TDZ may be carved out for the Pyramid project. Currently, only state administrative approval is required, and the City's current Tourism Development Zone application will be modified to add the supplementary use contemplated at The Pyramid.

- **Can the Development Agreement be amended to provide that the City and/or County can withdraw from the Agreement on the same terms as Bass Pro?**

  No.

  Conditions Precedent to City and County's Obligations. The City and County shall not be obligated to perform its obligations under this Agreement unless at the time of any performance by the City and County all the following conditions prevail:
  (a) There shall exist no condition, event or act which would constitute an Event of Default by Bass Pro under this Agreement which has not been cured; and
  (b) No representations and warranties of the Bass Pro set forth herein are untrue in such a materially adverse respect that it reasonably endangers the Bass Pro's performance hereunder.

- **We have been told that the City and County will not need to pay any part of the $30 million City/County contribution from tax revenues. But given that Bass Pro can require a letter of credit from the two governments to cover that contribution (p.17, Sec. 4.2.3), are not City and County general revenue funds at risk?**

  A Letter of Credit would become necessary in the event that either the City or County did not have their respective $15 million share ready for disbursement on the first day of construction. The City is prepared to fund its $15 million share of the Project Costs.